APPENDIX A

UNITED STATES EX REL. THE NEZ PERCE TRIBE OF INDIANS AND WILLIAM N. STEVENS, *Appellants*,

v.

FRED A. SEATON, Secretary of the Interior, *Appellee*.

No. 14258

United States Court of Appeals
District of Columbia Circuit

Argued May 2, 1958

Decided May 29, 1958

Petition for Rehearing Denied

Sept. 5, 1958

Mr. Richard Schifter, Washington, D. C., for appellants.

Mr. Harold S. Harrison, Atty., Dept. of Justice, with whom Mr. Roger P. Marquis, Atty., Dept. of Justice, was on the brief, for appellee.

Before EDGERTON, Chief Judge, and BAZELON and FAHY, Circuit Judges.

PER CURIAM.

Appellants seek to enjoin the Secretary of the Interior from conveying certain lands which the appellants claim are held by the United States in trust for them. The United States claims full ownership. The question is highly debatable. Because we think it cannot be decided in a suit in which the United States is not a party, we do not reach it. The United States is not being sued and has not consented to be sued. We think the District Court

was therefore right in entering summary judgment for the Secretary. Larson v. Domestic and Foreign Commerce Corp., 337 U.S. 682, 69 S.Ct. 1457, 93 L.Ed. 1628; cf. Land v. Dollar, 330 U.S. 731, 737-738, 67 S.Ct. 1009, 91 L.Ed. 1209. If the Secretary were violating a plain legal duty in regard to the lands, the case might be different.

Affirmed.

APPENDIX B

Order

Upon consideration of the appellants' petition for rehearing, it is

ORDERED by the court that the aforesaid petition be, and it is hereby, denied.

Dated: September 5, 1958

PER CURIAM.

Order

Upon consideration of appellants' petition for a rehearing en banc, it is

ORDERED by the court that the petition for rehearing en banc be, and it is hereby, denied.

Dated: September 5, 1958

Circuit Judge Burger dissents.

PER CURIAM.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 5492-55

UNITED STATES EX REL. THE NEZ PERCE TRIBE OF INDIANS and WILLIAM N. STEVENS, *Plaintiffs*,

v.

FRED A. SEATON, Secretary of the Interior, *Defendant*.

Ruling by the Court

THE COURT: (Holtzoff, J.) The Court is of the opinion that this is in effect an action against the United States. It seeks to enjoin the Secretary of the Interior from conveying certain lands to which the record title is in the United States and of which the United States claims to have full ownership. It is in effect an action to enjoin the United States from conveying property which it claims to own, in which the plaintiffs claim certain rights, the existence of which the United States denies.

Obviously, the United States is an indispensable party because its rights would be determined and adjudicated. It has not consented to be sued in a case such as this. Under the circumstances the Court will grant the defendant's motion for summary judgment on the ground that the suit is in effect a suit against the United States, and the United States has not consented to be sued.

The plaintiffs' motion is denied.